

may obtain incident to the determination of estate tax liability of any decedent from inventories of assets of estates of decedents concerning debts contracted with individuals resident in Sweden or with Swedish corporations or other entities.

§ 520.118 Information in specific cases.

Under the provisions of Article XVIII of the convention and upon request of the Finance Minister of Sweden, made through diplomatic channels and subject to the provisions of Article XIX of the convention, the Secretary will furnish to the Finance Minister of Sweden particulars in case of any specific taxpayer who is a citizen of Sweden or a Swedish corporation or other entity, relating to the application of Swedish national income and property tax and the Swedish communal income tax. In the case of other specific taxpayers, the Secretary will give consideration to requests of the Finance Minister of Sweden with a view to furnishing similar information concerning such taxpayer.

§ 520.119 Mutual assistance in the collection of taxes.

Under the provisions of Article XXI of the convention, the Secretary of the Treasury and the Finance Minister of Sweden are authorized to prescribe rules with respect to those provisions of the convention relating to the exchange of information, service of documents, and mutual assistance in the collection of the taxes to which the convention relates. Such rules concerning matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected and related matters will be made the subject matter of a common agreement between the competent authorities of the two contracting States concerned and when consummated will be published.

PART 521—DENMARK

Subpart—Withholding of Tax

RELEASE OF EXCESS TAX WITHHELD AND REDUCTION IN RATE OF WITHHOLDING

Sec.

521.1 Introductory.

521.2 Dividends.

521.3 Interest.

521.4 Patent and copyright royalties and film rentals.

521.5 Private pensions and life annuities.

521.6 Release of excess tax withheld at source.

521.7 Addressee not actual owner.

521.8 Beneficiaries of a domestic estate or trust.

Subpart—General Income Tax

TAXATION OF NONRESIDENT ALIENS WHO ARE RESIDENTS OF DENMARK AND OF DANISH CORPORATIONS

521.101 Introductory.

521.102 Applicable provisions of the Internal Revenue Code.

521.103 Scope of the convention.

521.104 Definitions.

521.105 Scope of convention with respect to determination of "industrial or commercial profits".

521.106 Control of a domestic enterprise by a Danish enterprise.

521.107 Income from operation of ships or aircraft.

521.108 Exemption from, or reduction in rate of, United States tax in the case of dividends, interest and royalties.

521.109 Real property income, natural resource royalties.

521.110 Government wages, salaries, pensions and similar remuneration.

521.111 Pensions and life annuities.

521.112 Compensation for labor or personal services.

521.113 Students and apprentices; remittances.

521.114 Visiting professors or teachers.

521.115 Credit against United States tax liability for Danish tax.

521.116 Reciprocal administrative assistance.

521.117 Claims in cases of double taxation.

AUTHORITY: 26 U.S.C. 62, 143, 144, 211, and 231.

Subpart—Withholding of Tax

SOURCE: Treasury Decision 5692, 14 FR 1123, Mar. 12, 1949, unless otherwise noted. Redesignated at 25 FR 14022, Dec. 31, 1960.

EFFECTIVE DATE NOTE: By T.D. 8732, 62 FR 53498, Oct. 14, 1997, Subpart—Withholding of Tax, consisting of §§ 521.1 through 521.8 was removed, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000.

RELEASE OF EXCESS TAX WITHHELD AND
REDUCTION IN RATE OF WITHHOLDING**§ 521.1 Introductory.**

(a) The income tax convention between the United States and the Kingdom of Denmark, signed May 6, 1948, proclaimed by the President of the United States on December 8, 1948, and effective as to taxable years beginning after December 31, 1947 (referred to in this subpart as the convention), provides in part as follows:

ARTICLE I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America: The Federal income tax, including surtaxes.

(b) In the case of Denmark:

The national income tax, including the war profits tax.

The intercommunal income tax.

The communal income tax.

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either contracting State subsequently to the date of signature of the present Convention.

ARTICLE II

(1) As used in this Convention:

(a) The term "United States" means the United States of America, and when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) The term "Denmark" means the Kingdom of Denmark; the provisions of the Convention shall not, however, extend to the Faroe Islands; nor do they apply to Greenland.

(c) The term "permanent establishment" means a branch office, factory, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities, nor does it include an agency unless the agent has and exercises a general authority to negotiate and conclude contracts on behalf of an enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a *bona fide* commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business

a permanent establishment of such enterprise. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(d) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "Danish enterprise."

(e) The term "enterprise" includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

(f) The term "United States enterprise" means an enterprise carried on in the United States of America by a resident of the United States of America or by a United States corporation or other entity; the term "United States corporation or other entity" means a partnership, corporation or other entity created or organized in the United States of America or under the law of the United States of America or of any State or Territory of the United States of America.

(g) The term "Danish enterprise" means an enterprise carried on in Denmark by a resident of Denmark or by a Danish corporation or other entity; the term "Danish corporation or other entity" means a partnership, corporation or other entity created or organized in Denmark or under Danish laws.

(h) The term "competent authorities" means, in the case of the United States the Commissioner of Internal Revenue or his authorized representative; and in the case of Denmark, the Chief of the Taxation Department of the Ministry of Finance (Generaldirektren for Skattevaesenet) or his authorized representative.

(2) In the application of the provisions of the present Convention by one of the contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which such term has under its own tax laws.

* * * * *

ARTICLE VI

(1) Dividends shall be taxable only in the contracting State in which the shareholder is resident or, if the shareholder is a corporation or other entity, in the contracting State in which such corporation or other entity is incorporated or organized.

(2) Each of the contracting States reserves, however, the right to collect and retain the tax, which, under its revenue laws, is deductible at the source with respect to such dividends, but the tax shall not exceed 15 percent of the amount of dividends derived from sources within such State by a resident, corporation or other entity of the other State,

if the recipient has no permanent establishment in the contracting State from which the dividends are derived.

(3) It is agreed, however, that the rate of dividend tax at the source shall not exceed five percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate of five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

ARTICLE VII

Interest on bonds, securities, notes, debentures, or on any other form of indebtedness derived from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from tax by such former State.

ARTICLE VIII

Royalties and other amounts derived as consideration for the right to use copyrights, patents, designs, secret processes and formulas, trade-marks and other like property (including rentals and like payments in respect of motion picture films) derived from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from taxation in such former State.

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ARTICLE X

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(2) Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

(3) The term "life annuities" as used herein means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in consideration of a gross sum paid for such obligation.

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ARTICLE XXII

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this Convention. With respect to the provisions of this Convention relating to exchange of information and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected, minimum amounts subject to collection and related matters.

ARTICLE XXIII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) Upon the exchange of instruments of ratification, the present Convention shall have effect.

(a) in the case of United States tax, for the taxable years beginning on or after the first day of January of the year in which such exchange takes place;

(b) in the case of Danish tax, for the taxable years beginning on or after the first day of April of the year in which such exchange takes place.

(3) The present Convention shall continue effective for a period of five years and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective.

(a) As respects United States tax, for the taxable years beginning on or after the first day of January next following the expiration of the six-month period;

(b) As respects Danish tax, for the taxable years beginning on or after the first day of April next following the expiration of the six-month period.

* * * * *

(b) As used in this subpart, unless the context otherwise requires, the terms defined in the above articles of the convention shall have the meanings so assigned to them.

§ 521.2 Dividends.

(a) *General.* The rate of tax imposed by section 211(a) of the Internal Revenue Code (relating to nonresident alien individuals not engaged in trade or business within the United States) and by section 231(a) of the Internal

Revenue Code (relating to foreign corporations not engaged in trade or business within the United States) is 30 percent. Such rate is reduced under Article VI of the convention to 15 percent in the case of dividends received on or after January 1, 1948, from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Denmark or by a Danish corporation if such alien or corporation at no time during the taxable year had a permanent establishment within the United States. As to what is a Danish corporation, see Article II(1)(g) of the convention. Thus, if a nonresident alien who is a resident of Denmark performs personal services within the United States during the calendar year 1948, but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax with respect to dividends derived in that year from United States sources, as provided in Article VI of the convention, even though by reason of his having rendered personal services within the United States he is engaged in trade or business therein in that year within the meaning of section 211(b) of the Internal Revenue Code. As to what constitutes a permanent establishment, see Article II(1)(c) of the convention.

(b) *Dividends paid by a United States subsidiary corporation.* (1) Under the provisions of Article VI (3) of the convention, dividends paid by a domestic corporation to a Danish corporation controlling, directly or indirectly, at the time the dividend is paid, 95 percent or more of the entire voting power in such domestic corporation, are subject to tax at the rate of only 5 percent, if (i) not more than 25 percent of the gross income of such paying corporation for the three-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest paid to such domestic corporation by its own subsidiary corporations, if any, and (ii) the relationship between such domestic corporation and such Danish corporation has not been arranged or main-

tained primarily with the intention of securing such reduced rate of 5 percent.

(2) Any domestic corporation which claims or contemplates claiming that dividends paid or to be paid by it on or after January 1, 1948, are subject only to the 5 percent rate shall file, as soon as practicable, with the Commissioner of Internal Revenue, the following information: (i) the date and place of its organization; (ii) the number of outstanding shares of stock of the domestic corporation having voting power and the voting power thereof; (iii) the person or persons beneficially owning such stock of the domestic corporation and their relationship to the Danish corporation; (iv) the amount of gross income, by years, of the paying corporation for the three-year period immediately preceding the taxable year in which the dividend is paid; (v) the amount of interest and dividends, by years, included in the gross income of such domestic corporation and the amount of interest and dividends, by years, received by such corporation from its subsidiary corporations, if any; and (vi) the relationship between the domestic corporation and the Danish corporation to which it pays the dividend.

(3) As soon as practicable after such information is filed, the Commissioner of Internal Revenue will determine whether the dividends concerned fall within the provisions of Article VI (3) of the convention and may authorize the release of excess tax withheld with respect to dividends which come within such provision. In any case in which the Commissioner of Internal Revenue has notified such domestic corporation that the dividends come within such provision, the reduced rate of 5 percent applies to any dividends subsequently paid by such corporation to the Danish corporation unless the stock ownership of the domestic corporation, or the character of its income, materially changes, and, if such change or changes occur, such corporation shall promptly notify the Commissioner of Internal Revenue of the then existing facts with respect to such stock ownership or income.

(c) *Effect on withholding in case of dividends of address in Denmark.* For the purposes of withholding of the tax in

the case of dividends, every non-resident alien (including a nonresident alien individual, fiduciary or partnership) whose address is in Denmark shall be deemed by United States withholding agents to be a resident of Denmark not having a permanent establishment in the United States and every corporation whose address is in Denmark shall be deemed by such withholding agents to be a Danish corporation not having a permanent establishment in the United States.

(d) *Rate of withholding.* (1) On and after January 1, 1949, withholding in the case of dividends paid to non-resident aliens (including a non-resident alien individual, fiduciary or partnership) and to foreign corporations, whose addresses are in Denmark, shall (except (i) in any case in which prior to the date of payment of such dividend, the Commissioner of Internal Revenue has notified the paying corporation that such dividend falls within the provisions of Article VI (3) of the convention, and (ii) in any case in which the Commissioner notifies the withholding agent that the reduced rate shall not apply), be at the rate of 15 percent.

(2) The preceding provisions relative to residents of Denmark and to Danish corporations are based upon the assumption that the payee of the dividend is the actual owner of the capital stock from which the dividend is derived and consequently is the person liable to the tax upon such dividend. As to action by the recipient who is not the owner of the dividend, see § 521.7.

§ 521.3 Interest.

(a) *General.* Interest, whether on bonds, securities, notes, debentures, or any other form of indebtedness (including interest on obligations of the United States and on obligations of instrumentalities of the United States), received on or after January 1, 1948, from sources within the United States by (1) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Denmark, or (2) a Danish corporation, is exempt from United States tax under the provisions of Article VII of the convention if such alien or corporation at no time during the taxable year in

which such interest is so received had a permanent establishment in the United States. Such interest is, therefore, not subject to the withholding provisions of the Internal Revenue Code.

(b) *Exemption from withholding.* (1) To obviate withholding at the source in the case of coupon bond interest, the nonresident alien resident in Denmark or the Danish corporation shall submit Form 1001-D, in duplicate, to the paying agent with each presentation of interest coupons. Such form shall be signed by the owner of the interest, trustee or agent, and shall show the name and address of the obligor, and the name and address of the owner of such interest and the amount of such interest. Such form shall contain a statement that the owner is a resident of Denmark or a Danish corporation and that such owner has no permanent establishment in the United States.

(2) The exemption from United States tax contemplated by Article VII of the convention, insofar as it concerns coupon bond interest, is an exemption applicable only to the owner of such interest. The person presenting such coupon or on whose behalf it is presented shall, for the purpose of the exemption, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon is not the owner of the bond, Form 1001, and not Form 1001-D, shall be executed.

(3) The original and duplicate ownership certificates, Form 1001-D, must be forwarded to the Commissioner with the quarterly return, Form 1012, as provided in existing regulations with respect to Form 1001. See § 29.143-7 of Regulations 111 (26 CFR 1949 ed. Supps. 29.143-7) [and § 39.143-7 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)]. Form 1001-D need not be listed on Form 1012.

(4) In the case of interest coupons presented in Denmark by a nonresident alien who is not a resident of Denmark or by a foreign corporation other than a Danish corporation, ownership certificates, Form 1001, shall be filed as provided in existing regulations without reference to the provisions of the

convention. See § 29.143-4 of Regulations 111 (26 CFR 1949 ed. Supps. 29.143-4) [and § 39.143-4 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)].

(5) To avoid withholding at the source in the case of interest other than interest payable by means of coupons, the nonresident alien who is a resident of Denmark, or the Danish corporation, shall file Form 1001A-D, in duplicate, with the withholding agent in the United States. Such form shall be signed by the owner of the income, trustee or agent, and shall show the name and address of the obligor and the name and address of the owner of such interest. Such form shall contain a statement that the owner is a resident of Denmark or is a Danish corporation and that the owner has no permanent establishment in the United States.

(6) Form 1001A-D must be filed for each three calendar year period and the first such form filed by the taxpayer with any withholding agent should be filed not later than 20 days preceding the date of the first payment of income in such period. If the taxpayer files such form with the withholding agent in the calendar year 1948 or in any subsequent calendar year no additional Form 1001A-D need be filed prior to the end of the two calendar years immediately following the calendar year in which such form is so filed unless the Commissioner notifies the withholding agent that an additional Form 1001A-D must be filed by the taxpayer at any earlier date. The duplicate of Form 1001A-D should be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Records Division, Washington 25, D.C.

§ 521.4 Patent and copyright royalties and film rentals.

(a) Royalties and other like amounts received on or after January 1, 1948, by (1) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Denmark or (2) a Danish corporation, as consideration for the right to use copyrights, patents, designs, secret processes and formulae, trademarks, and other like property, including rentals and like payments in respect of mo-

tion picture films, are exempt from United States tax under the provisions of Article VIII of the convention if such alien or corporation had at no time during the taxable year in which such royalty or other amount was so received a permanent establishment in the United States. Such items are, therefore, not subject to the withholding provisions of the Internal Revenue Code. As to what constitutes a permanent establishment, see Article II(1)(c) of the convention.

(b) To obviate withholding at the source, the nonresident alien who is a resident of Denmark, or the Danish corporation shall file Form 1001A-D, in duplicate, with the withholding agent in the United States. Such form shall be signed by the owner of the income, trustee or agent and shall contain the statements provided on such form with respect to interest as set forth in § 521.3, the provisions of which with respect to the effective period of such form are equally applicable with respect to the income falling within the scope of this section. The duplicate copy of Form 1001A-D should be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Records Division, Washington 25, D.C.

§ 521.5 Private pensions and life annuities.

(a) Under Article X(2) of the convention private pensions and life annuities derived on or after January 1, 1948, from sources within the United States by a nonresident alien individual who is a resident of Denmark are exempt from United States tax.

(b) The person paying such income should be notified by letter from the resident of Denmark that the income is exempt from taxation under the provisions of Article X(2) of the convention. Such letter shall contain the address of the individual and a statement that such individual is a resident of Denmark. The letter of notification, or a copy thereof, should be immediately forwarded by the recipient to the Commissioner of Internal Revenue, Records Division, Washington 25, D.C. Such letter shall constitute authorization to the payor of the income to pay such income without deduction of the tax at

the source unless the Commissioner subsequently notifies such payor that the tax should be withheld with respect to payments made after such notification.

§ 521.6 Release of excess tax withheld at source.

(a) *General.* (1) In order to bring the convention into force and effect at the earliest practicable date:

(i) The reduced rate of tax of 15 percent to be withheld at the source on dividends, and

(ii) Exemption from tax otherwise withheld at the source on interest, patent royalties, copyright royalties, film rentals and the like,

are hereby made effective beginning January 1, 1948 in any case in which such dividends, interest, patent royalties, copyright royalties, film rentals and the like are derived from sources within the United States by a nonresident alien including a nonresident alien individual, fiduciary and partnership who is a resident of Denmark, or a Danish corporation.

(2) Accordingly, in the case of dividends paid to a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address at the time of payment was in Denmark, or to a Danish corporation whose address at the time of payment was in Denmark, where tax at the rate of 30 percent has been withheld on or after January 1, 1948, from dividends, there shall be released by the withholding agent and paid over to the person from whom it was withheld an amount equal to 15 percent of such dividends.

(3) In the case of every such taxpayer who furnishes to the withholding agent Form 1001-D, as prescribed in § 521.3 or 521.4, where tax at the rate of 30 percent has been withheld on or after January 1, 1948, there shall be released by the withholding agent and paid over to the person from whom withheld an amount equal to the amount so withheld in the case of interest (as to coupon bond interest, see paragraph (4) of this paragraph), patent royalties, copyright royalties, film rentals and the like.

(4) In the case of every such taxpayer who furnishes to the withholding agent

Form 1001-D, in duplicate, where tax at the rate of 28 percent or 30 percent, as the case may be, has been withheld on or after January 1, 1948, from coupon bond interest, there shall be released by the withholding agent and paid over to the person from whom it was withheld an amount equal to the tax withheld from such interest. Form 1001-D used for this purpose should be clearly marked "Substitute" in order to replace Forms 1001 previously filed. One Form 1001-D, in duplicate, may be used to replace two or more Forms 1001. The form marked "Substitute" is to be used solely for the release of excess tax withheld in 1948. The use of Form 1001-D for the purpose of exemption upon presentation of interest coupons is set forth in § 521.3 (b).

(b) *Private pensions and life annuities paid in 1948 or subsequent years.* (1) In order to bring the convention into force and effect at the earliest practicable date, the exemption from tax otherwise withheld at the source on private pensions and life annuities is made effective beginning January 1, 1948, in any case in which such pensions and life annuities are derived from sources within the United States by a nonresident alien individual who is a resident of Denmark.

(2) The person paying such income should be notified by letter from the resident of Denmark that the income is exempt from taxation under the provisions of Article X(2) of the convention. See § 521.5. Such letter will constitute authorization to the payor of the income to release the tax withheld on or after January 1, 1948, with respect to such pensions or life annuities.

(c) *Subsidiary's dividends.* With respect to a dividend paid on or after January 1, 1948, by a domestic corporation to a Danish corporation whose address is in Denmark, tax shall be withheld in accordance with the provisions of § 521.2 unless prior to the date of payment of such dividend the Commissioner of Internal revenue has notified the paying corporation that such dividend falls within the scope of Article VI (3) of the convention. As soon as practicable after information required under § 521.2 (b) is filed, the Commissioner of Internal Revenue will determine whether the dividend involved

§ 521.7

falls within the scope of Article VI (3) and may authorize the release of the excess tax withheld with respect to dividends which come within the scope of such provision.

§ 521.7 Addressee not actual owner.

(a) If the recipient in Denmark of any dividend from sources within the United States is a nominee or representative through whom the dividend flows to a person other than a person described in § 521.2(a) as being entitled to the reduced rate of 15 percent provided in Article VI of the convention, such recipient in Denmark will withhold an additional amount of United States tax equivalent to the difference between the United States tax which would have been withheld had the convention not been in effect (30 percent as at the date of approval of this subpart) and the 15 percent withheld at the source with respect to such dividend pursuant to § 521.2.

(b) In any case in which a fiduciary or a partnership with an address in Denmark receives, otherwise than as a nominee or representative, a dividend from a United States corporation, if a beneficiary of such fiduciary or a partner in such partnership is not entitled to the reduced rate of tax provided in Article VI of the convention, the fiduciary or partnership will withhold an additional amount of United States tax with respect to the portion of such dividend included in such beneficiary's or partner's net distributive share of the income of such fiduciary or partnership, as the case may be. The rate of the additional tax is calculated in the same manner as under paragraph (a) of this section.

(c) The amounts so withheld by the withholding agent in Denmark will, on or before the 15th day after the close of the calendar year quarter in which such withholding has taken place, be deposited with the Danish National Bank (Danmarks Nationalbank) without converting such amounts into dollars. Each withholding agent making such deposit will accompany such deposit with the appropriate Danish form executed as required by the Danish National Bank. The Danish National Bank has arranged to remit, on or before the end of the calendar month in

26 CFR Ch. I (4-1-99 Edition)

which such deposit is so made, by draft in United States dollars, the amounts so deposited to the District Director of Internal Revenue, Baltimore, Maryland, U.S.A., forwarding with such draft the appropriate Danish form filed by the withholding agents.

§ 521.8 Beneficiaries of a domestic estate or trust.

A nonresident alien who is a resident of Denmark and who is a beneficiary of a domestic estate or trust shall be entitled to the exemption, or reduction in the rate of tax, as the case may be, provided in Articles VI, VII and VIII if the convention with respect to dividends, interest and royalties to the extent such item or items are included in his distributive share of income of such estate or trust. In such case such beneficiary must, in order to be entitled to the exemption or reduction in the rate of tax, in the case of interest or royalties, execute Form 1001A-D and file such form with the fiduciary of such estate or trust in the United States.

Subpart—General Income Tax

SOURCE: Treasury Decision 5777, 15 FR 1595, Mar. 22, 1950, unless otherwise noted. Redesignated at 25 FR 14022, Dec. 31, 1960.

TAXATION OF NONRESIDENT ALIENS WHO ARE RESIDENTS OF DENMARK AND OF DANISH CORPORATIONS

§ 521.101 Introductory.

The income tax convention between the United States and the Kingdom of Denmark, signed May 6, 1948, proclaimed (with reservations thereto) by the President of the United States on December 8, 1948, and effective for taxable years beginning on and after January 1, 1948 (referred to in this subpart as the convention), provides in part as follows:

ARTICLE I

(I) The taxes referred to in this Convention are:

(a) In the case of the United States of America: The Federal income tax, including surtaxes.

(b) In the case of Denmark:
The national income tax, including the war profits tax.

The intercommunal income tax.

The communal income tax.

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either contracting State subsequently to the date of signature of the present Convention.

ARTICLE II

(1) As used in this Convention:

(a) The term "United States" means the United States of America, and when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) The term "Denmark" means the Kingdom of Denmark; the provisions of the Convention shall not, however, extend to the Faroe Islands; nor do they apply to Greenland.

(c) The term "permanent establishment" means a branch office, factory, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities, nor does it include an agency unless the agent has and exercises a general authority to negotiate and conclude contracts on behalf of an enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a bona fide commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(d) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "Danish enterprise".

(e) The term "enterprise" includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

(f) The term "United States enterprise" means an enterprise carried on in the United States of America by a resident of the United States of America or by a United States corporation or other entity; the term "United States corporation or other entity" means a partnership, corporation or other entity created or organized in the United States of America or under the law of the

United States of America or of any State or Territory of the United States of America.

(g) The term "Danish enterprise" means an enterprise carried on in Denmark by a resident of Denmark or by a Danish corporation or other entity; the term "Danish corporation or other entity" means a partnership, corporation, or other entity created or organized in Denmark or under Danish laws.

(h) The term "competent authorities" means, in the case of the United States, the Commissioner of Internal Revenue or his authorized representative; and in the case of Denmark, the Chief of the Taxation Department of the Ministry of Finance (Generaldirektøren for Skattevaesenet) or his authorized representative.

(2) In the application of the provisions of the present Convention by one of the contracting States any term not otherwise defined, shall, unless the context otherwise requires, have the meaning which such term has under its own tax laws.

ARTICLE III

(1) An enterprise of one of the contracting States shall not be subject to taxation in the other contracting State in respect of its industrial and commercial profits unless it is engaged in trade or business in such other State through a permanent establishment situated therein. If it is so engaged such other State may impose its tax upon the entire income of such enterprise from sources within such other State.

(2) In determining the industrial or commercial profits from sources within the territory of one of the contracting States of an enterprise of the other contracting State, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the territory of the former contracting State by such enterprise.

(3) Where an enterprise of one of the contracting States is engaged in trade or business in the territory of the other contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment and the profits so attributed shall, subject to the law of such other contracting State, be deemed to be income from sources within the territory of such other contracting State.

ARTICLE IV

Where an enterprise of one of the contracting States, by reason of its participation in the management or the financial

structure of an enterprise of the other contracting State, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would normally have accrued to one of the enterprises but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE V

(1) Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State shall be exempt from taxation in the other contracting State.

(2) The present Convention shall not be deemed to affect the arrangement between the United States and Denmark providing for relief from double income taxation on shipping profits, effected by exchanges of notes dated May 22, August 9 and 18, October 24, 25, and 28, and December 5 and 6, in the year 1922.

ARTICLE VI

(1) Dividends shall be taxable only in the contracting State in which the shareholder is resident or, if the shareholder is a corporation or other entity, in the contracting State in which such corporation or other entity is incorporated or organized.

(2) Each of the contracting States reserves, however, the right to collect and retain the tax which, under its revenue laws, is deductible at the source with respect to such dividends, but the tax shall not exceed 15 percent of the amount of dividends derived from sources within such State by a resident, corporation or other entity of the other State, if the recipient has no permanent establishment in the contracting State from which the dividends are derived.

(3) It is agreed, however, that the rate of dividend tax at the source shall not exceed five percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

ARTICLE VII

Interest on bonds, securities, notes, debentures, or on any other form of indebtedness derived from sources within one of the contracting States by a resident or corporation or other entity of the other contracting

State not having a permanent establishment in the former State shall be exempt from tax by such former State.

ARTICLE VIII

Royalties and other amounts derived as consideration for the right to use copyrights, patents, designs, secret processes and formulas, trade-marks and other like property (including rentals and like payments in respect of motion picture films) derived from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from taxation in such former State.

ARTICLE IX

(1) Income from real property (not including interest derived from mortgages and bonds secured by real property) and royalties in respect of the operation of mines, quarries, or other natural resources, shall be taxable only in the contracting State in which such property, mines, quarries, or other natural resources are situated.

(2) A resident or corporation of one of the contracting States deriving any such income from sources within the other contracting State may, for any taxable year, elect to be subject to the tax of such other contracting State, on a net basis, as if such resident or corporation were engaged in trade or business within such other contracting State through a permanent establishment therein during such taxable year.

ARTICLE X

(1) Wages, salaries, and similar compensation and pensions paid by one of the contracting States or by any other public authority within that State to individuals residing in the other State shall be taxable only in the former State.

(2) Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

(3) The term "life annuities" as used herein means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in consideration of a gross sum paid for such obligation.

ARTICLE XI

(1) Compensation for labor or personal services, including the practice of the liberal professions, shall be taxable only in the contracting State in which such services are rendered.

(2) The provisions of paragraph (1) are, however, subject to the following exceptions:

(a) A resident of Denmark shall be exempt from United States tax upon compensation for labor or personal services if he is temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and the compensation received for such services does not exceed \$3,000 in the aggregate. If, however, his compensation is received for labor or personal services performed as an employee of, or under contract with, a resident or corporation or other entity of Denmark, he will be exempt from United States tax if his stay in the United States does not exceed a total of 180 days during the taxable year.

(b) The provisions of paragraph (2)(a) of this Article shall apply *mutatis mutandis*, to a resident of the United States with respect to compensation for personal services otherwise subject to income tax in Denmark.

(3) The provisions of this Article shall have no application to the income to which Article X (1) relates.

ARTICLE XII

Gains derived in one of the contracting States from the sale or exchange of capital assets by a resident or corporation or other entity of the other contracting State shall be exempt from taxation in the former State if such resident or corporation or other entity is not engaged in trade or business in such former State. [This Article deleted by reservation, see President's Proclamation hereinafter.]

ARTICLE XIII

Students or apprentices, citizens of one of the contracting States, residing in the other contracting State exclusively for purposes of study or for acquiring business experience, shall not be taxable in the latter State in respect of remittances (other than their own income) received by them from abroad for the purposes of their maintenance or studies.

ARTICLE XIV

A professor or teacher, a resident of one of the contracting States, who temporarily visits the territory of the other contracting State for the purpose of teaching for a period not exceeding two years at a university, college, school or other educational institution in the other contracting State, shall be exempted in such other contracting State from tax on his remuneration for such teaching for such period.

ARTICLE XV

It is agreed that double taxation shall be avoided in the following manner:

(a) The United States in determining the income taxes, including surtaxes, of its citizens, residents or corporations may, regardless of any other provision of this Convention, include in the basis upon which such

taxes are imposed all items of income taxable under the revenue laws of the United States as if this convention had not come into effect. The United States shall, however, subject to the provisions of section 131, Internal Revenue Code, deduct from its taxes the amount of Danish taxes specified in Article I of this Convention.

(b) Denmark, in determining its taxes specified in Article I of this Convention, may regardless of any other provision of this Convention, include in the basis upon which such taxes are imposed all items of income subject to such taxes under the taxation laws of Denmark. Denmark shall, however, deduct from the taxes so calculated the United States tax on income coming within the provisions of Articles III, IX, X (1), XIII and XIV of this Convention and on earned income earned within the United States, but in an amount not exceeding that proportion of the Danish taxes which such income bears to the entire income subject to tax by Denmark. Denmark will also allow as a deduction from its taxes an amount equal to 15 percent (five percent in the case of dividends covered by Article VI (3)) of the gross amount of dividends (reduced by the United States tax applicable to such dividends) from sources within the United States.

ARTICLE XVI

(1) The citizens of one of the contracting States shall not, while resident in the other contracting State, be subjected therein to other or more burdensome taxes than are the citizens of such other contracting State residing in its territory. As used in this paragraph:

(a) The term "citizens" includes all legal persons, partnerships, and associations created or organized under the laws in the respective contracting States, and

(b) The term "taxes" means taxes of every kind or description whether national, Federal, state, provincial or municipal.

(2) It is agreed that section 25, paragraph 5, of the Danish law No. 391 of July 12, 1946, prescribing an addition of 50 percent of the capital increment tax on corporations in cases where more than 50 percent of the entire stock capital is owned by a single shareholder residing outside Denmark, shall not be applicable when the shareholder in question is a resident of the United States or a United States corporation or other entity.

ARTICLE XVII

The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against tax

§ 521.101

avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade secret or trade process.

ARTICLE XVIII

(1) The contracting States undertake to lend assistance and support to each other in the collection of the taxes which are the subject of the present Convention, together with interest, costs, and additions to the taxes.

(2) In the case of application for enforcement of taxes, revenue claims of each of the contracting States which have been finally determined may be accepted for enforcement by the other contracting State and may be collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

(3) Any application shall include a certification that under the laws of the State making the application the taxes have been finally determined.

(4) The assistance provided for in this Article shall not be accorded with respect to the citizens, corporations, or other entities of the State to which application is made, except as is necessary to insure that the exemption or reduced rate of tax granted under the present Convention to such citizens, corporations, or other entities shall not be enjoyed by persons not entitled to such benefits.

ARTICLE XIX

The State to which application is made for information or assistance shall comply as soon as possible with the request addressed to it except that such State may refuse to comply with the request for reasons of public policy or if compliance would involve violation of a trade, business, industrial or professional secret or trade process.

ARTICLE XX

Where a taxpayer shows proof that the action of the revenue authorities of the contracting States has resulted in double taxation in his case in respect of any of the taxes to which the present Convention relates, he shall be entitled to lodge a claim with the State of which he is a citizen or, if he is not a citizen of either of the contracting States, with the State of which he is a resident, or, if the taxpayer is a corporation or other entity, with the State in which it is created or organized. Should the claim be upheld, the competent authority of such State may come to an agreement with the competent authority of the other State with

26 CFR Ch. I (4-1-99 Edition)

a view to equitable avoidance of the double taxation in question.

ARTICLE XXI

(1) The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

(3) Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement.

ARTICLE XXII

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this Convention. With respect to the provisions of this Convention relating to exchange of information and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected, minimum amounts subject to collection and related matters.

ARTICLE XXIII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) Upon the exchange of instruments of ratification, the present Convention shall have effect.

(a) In the case of United States tax, for the taxable years beginning on or after the first day of January of the year in which such exchange takes place;

(b) In the case of Danish tax, for the taxable years beginning on or after the first day of April of the year in which such exchange takes place.

(3) The present Convention shall continue effective for a period of five years and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective.

(a) As respects United States tax, for the taxable years beginning on or after the first

Internal Revenue Service, Treasury

§ 521.103

day of January next following the expiration of the six-month period;

(b) As respects Danish tax, for the taxable years beginning on or after the first day of April next following the expiration of the six-month period.

Done at Washington, in duplicate, in the English and Danish languages, the two texts having equal authenticity, this 6th day of May 1948.

For the President of the United States of America:

[SEAL]

G. C. MARSHALL.

For his Majesty the King of Denmark:

[SEAL]

HENRIK KAUFFMAN.

PROCLAMATION OF THE PRESIDENT OF THE
UNITED STATES DATED DECEMBER 8, 1948

* * * * *

And whereas the Senate of the United States of America, by their resolution of June 17, 1948, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the aforesaid convention subject to a reservation, as follows:

The Government of the United States of America does not accept Article XII of the convention relating to gains from the sale or exchange of capital assets.

And whereas the text of the aforesaid reservation was communicated by the Government of the United States of America to the Government of Denmark and thereafter the Government of Denmark gave notice of its acceptance of the aforesaid reservation;

And whereas the aforesaid convention was duly ratified by the President of the United States of America on November 24, 1948, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid reservation, and the said convention, with the exception of Article XII thereof, was duly ratified on the part of Denmark;

And whereas the respective instruments of ratification of the aforesaid convention were duly exchanged at Washington on December 1, 1948, and a protocol of exchange of instruments of ratification, in the English and Danish languages, was signed on that date by the respective Plenipotentiaries of the United States of America and Denmark, the English text of which protocol reads in part: "it is the understanding of both Governments that Article XII of the convention aforesaid shall be deemed to be deleted and of no effect.";

* * * * *

§ 521.102 Applicable provisions of the Internal Revenue Code.

(a) The Internal Revenue Code provides in part as follows:

CHAPTER I—INCOME TAX

* * * * *

SEC. 22. GROSS INCOME.

* * * * *

(b) *Exclusions from gross income.* The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

* * * * *

(7) *Income exempt under treaty.* Income of any kind, to the extent required by any treaty obligation of the United States;

* * * * *

SEC. 62. RULES AND REGULATIONS. The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

(b) Pursuant to section 62 of the Internal Revenue Code, other provisions of the internal revenue laws, and to Article XXII of the convention, the following regulations, which are designated as §§ 521.101 to 521.117 are hereby prescribed and all regulations inconsistent herewith are modified accordingly.

§ 521.103 Scope of the convention.

(a) The primary purposes of the convention, to be accomplished on a reciprocal basis, are to avoid double taxation upon major items of income derived from sources in one country by persons resident in, or by corporations of, the other country, and to provide for administrative cooperation between the competent tax authorities of the two countries looking to the avoidance of double taxation and fiscal evasion.

(b) The specific classes of income from sources within the United States exempt under the convention from United States tax for taxable years beginning on and after January 1, 1948, are:

(1) Industrial and commercial profits of a Danish enterprise having no permanent establishment in the United States (Article III);

(2) Income derived by a nonresident alien who is a resident of Denmark, or by a Danish corporation, from the operation of ships or aircraft registered in Denmark (Article V);

(3) Interest and royalties (including motion picture film rentals) derived by a nonresident alien who is a resident of Denmark or by a Danish corporation if such alien or corporation has no permanent establishment in the United States (Articles VII and VIII);

(4) Compensation and pensions paid by Denmark to aliens for services rendered to Denmark (Article X(1));

(5) Private pensions and life annuities derived by nonresident alien individuals residing in Denmark (Article X(2));

(6) Compensation, subject to certain limitations, for personal services derived by a nonresident alien who is a resident of Denmark (Article XI);

(7) Remittances from sources outside the United States received in the United States by a Danish citizen who is temporarily present in the United States for the purposes of study or for acquiring business experience, such remittances being for the purpose of his maintenance or studies (Article XIII);

(8) Remuneration derived from teaching in the United States for a period of not more than two years by a professor or teacher who is a resident of Denmark but who is temporarily present in the United States (Article XIV).

(c) The convention also reduces to 15 percent the rate of tax otherwise imposed upon dividends derived by a nonresident alien who is a resident of Denmark, or by a Danish corporation, if such alien or corporation has no permanent establishment in the United States (Article VI).

(d) As to exemption from withholding of the tax at the source in the case of interest, royalties, pensions and life annuities, and reduction in the rate of tax from 30 percent to 15 percent in the case of dividends, see Treasury Decision 5692, approved March 8, 1949 (§§ 521.1 to 521.8).

(e) The convention does not affect the liability to United States income

taxation of citizens of Denmark who are residents of the United States except that such individuals are entitled to the benefits of Article XV (relating to credit for Danish income tax), and of Article XVI (relating to equality of taxation). Except as provided in Article XV, relating to the credit for income tax, the convention does not affect taxation by the United States of a citizen of the United States or of a domestic corporation, even though such citizen is resident in Denmark and such corporation is engaged in trade or business in Denmark.

EFFECTIVE DATE NOTE: By T.D. 8732, 62 FR 53498, Oct. 14, 1997, § 521.103 was amended by removing and reserving paragraph (d), effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000.

§ 521.104 Definitions.

(a) As used in §§ 521.101 to 521.117, unless the context otherwise requires, the terms defined in the convention shall have the meanings so assigned to them. Any term used in §§ 521.101 to 521.117, which is not defined in the convention but which is defined in the Internal Revenue Code shall be given the definition contained therein unless the context otherwise requires.

(b) As used in §§ 521.101 to 521.117.

(1) The term "permanent establishment" means a branch office, factory, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities. The fact that a Danish corporation has a domestic subsidiary corporation or a foreign subsidiary corporation having a branch in the United States, does not of itself constitute either subsidiary corporation a permanent establishment of the parent Danish enterprise. The fact that a Danish enterprise has business dealings in the United States through a bona fide commission agent, broker, or custodian, acting in the ordinary course of his business as such, or maintains in the United States an office or other fixed place of business used exclusively for the purchase of goods or merchandise, does not mean that such Danish enterprise has a permanent establishment in the United States. If, however, a Danish enterprise carries on business in

the United States through an agent who has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or if it has an agent who maintains within the United States a stock of merchandise from which he regularly fills orders on behalf of his principal, then such enterprise shall be deemed to have a permanent establishment in the United States. However, an agent having power to contract on behalf of his principal but only at fixed prices and under conditions determined by the principal does not necessarily constitute a permanent establishment of such principal. The mere fact that an agent (assuming he has no general authority to contract on behalf of his employer or principal) maintains samples or occasionally fills orders from incidental stocks of goods maintained in the United States will not constitute a permanent establishment within the United States. The mere fact that salesmen, employees of a Danish enterprise, promote the sale of their employer's products in the United States or that such enterprise transacts business in the United States by means of mail order activities, does not mean such enterprise has a permanent establishment therein. The term "permanent establishment" as used in the convention implies the active conduct therein of a business enterprise. The mere ownership, for example, of timberlands or a warehouse in the United States by a Danish enterprise does not mean that such enterprise has a permanent establishment therein. As to the effect of the maintenance of a permanent establishment within the United States upon exemption from United States tax in the case of interest and royalties and reduction in the rate of United States tax in the case of dividends, see § 521.108.

(2) The term "enterprise" means any commercial or industrial undertaking whether conducted by an individual, partnership, corporation, or other entity. It includes such activities as manufacturing, merchandising, mining, processing, and banking. It does not include the rendition of personal services. Hence, a non resident alien who is a resident of Denmark and who renders personal services is not, merely by rea-

son of such services, engaged in an enterprise within the meaning of the convention and his liability to United States tax is not affected by Article III of the convention.

(3) The term "Danish enterprise" means an enterprise carried on in Denmark by a resident of Denmark or by a Danish corporation or other entity. The term "Danish corporation or other entity" means a partnership, corporation or other entity created or organized in Denmark or under the laws of Denmark.

(4) The term "industrial or commercial profits" means profits arising from industrial, commercial, mercantile, manufacturing, and like activities of a Danish enterprise as defined in this section. Such term does not include rentals, royalties, interest, dividends, fees, compensation for personal services, nor gains derived from the sale or exchange of capital assets. Such enumerated items of income are not governed by the provisions of Article III of the convention.

§ 521.105 Scope of convention with respect to determination of "industrial or commercial profits".

(a) *General.* Article III of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable by the other contracting State upon its industrial or commercial profits unless it has a permanent establishment in the latter State. Hence, a Danish enterprise is subject to United States tax upon its industrial and commercial profits to the extent of such profits from sources within the United States only if it has a permanent establishment within the United States. From the standpoint of Federal income taxation, the article has application only to a Danish enterprise and to the industrial and commercial income thereof from sources within the United States. It has no application for example, to compensation for labor or personal services performed in the United States nor to income derived from real property located in the United States, including rentals and royalties therefrom, nor to gains from the sale or disposition of

such property, nor to interest, dividends, royalties, other fixed or determinable annual or periodical income and gains derived from the sale or exchange of capital assets.

(b) *No United States permanent establishment.* A nonresident alien (including a nonresident alien individual, fiduciary and partnership) who is a resident of Denmark or a Danish corporation, carrying on an enterprise in Denmark and having no permanent establishment in the United States, is not for taxable years beginning on or after January 1, 1948, subject to United States income tax upon industrial or commercial profits from sources within the United States. For example, if the Danish enterprise carried on by such alien or corporation sells, in 1948, merchandise, such as silverware, dairy products, or liquors, through a bona fide commission agent or broker in the United States acting in the ordinary course of his business as such agent or broker, the resulting profits are, under the terms of Article III of the convention, exempt from United States income tax. Likewise no permanent establishment exists and no United States income tax attaches to such profits if such enterprise, through its sales agents in the United States, secures orders for its products, the sales being made in Denmark.

(c) *United States permanent establishment.* A nonresident alien (including a nonresident alien individual, fiduciary and partnership), who is a resident of Denmark, or a Danish corporation, whether or not carrying on a Danish enterprise, having a permanent establishment in the United States, is subject to tax upon industrial or commercial profits from sources within the United States to the same extent as are nonresident aliens and foreign corporations engaged in trade or business therein. In the determination of the income taxable to such alien or foreign corporation all industrial and commercial profits from sources within the United States shall be deemed to be allocable to the permanent establishment in the United States. Hence, for example, if a Danish enterprise having a permanent establishment in the United States sells in the United States, through a commission agent

therein goods produced in Denmark, the resulting profits derived from United States sources from such transactions are allocable to such permanent establishment even though such transactions were carried on independently of such establishment. In determining industrial and commercial profits no account shall be taken of the mere purchase of merchandise within the United States by the Danish enterprise. The industrial or commercial profits of the permanent establishment shall be determined as if the establishment were an independent enterprise engaged in the same or similar activities and dealing at arm's length with the enterprise of which it is a permanent establishment.

§ 521.106 Control of a domestic enterprise by a Danish enterprise.

Article IV of the convention provides, in effect, that if a Danish corporation by reason of its control of a domestic enterprise imposes on such later enterprise conditions different from those which would result from normal business relations between independent enterprises, the accounts between the enterprises may be adjusted so as to ascertain the true net income of each enterprise. The purpose is to place the controlled domestic enterprise on a tax parity with an uncontrolled domestic enterprise by determining, according to the standard of an uncontrolled enterprise, the true net income from the property and business of the controlled enterprise. The basic objective of the article is that if the accounting records do not truly reflect the net income from the property and business of such domestic enterprise the Commissioner of Internal Revenue may intervene and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income or deductions of any item or element affecting net income as between such domestic enterprise and the Danish enterprise by which it is controlled or directed, determine the true net income of the domestic enterprise. The provisions of § 29.45-1 of Regulations 111 (26 CFR 1949 ed. Supps. 29.45-1) [and § 39.45-1 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)] shall, insofar as applicable, be followed

in the determination of the net income of the domestic business.

§ 521.107 Income from operation of ships or aircraft.

The income derived from the operation of ships or aircraft registered in Denmark by a nonresident alien who is a resident of Denmark, or by a Danish corporation, and carrying on an enterprise in Denmark, is, for taxable years beginning on or after January 1, 1948, exempt from United States income tax under the provisions of Article V of the convention.

§ 521.108 Exemption from, or reduction in rate of, United States tax in the case of dividends, interest and royalties.

(a) *Dividends*—(1) *General*. The tax imposed by the Internal Revenue Code in the case of dividends received from sources within the United States by (i) a nonresident alien (including a nonresident alien individual, fiduciary and partnership) who is a resident of Denmark, or (ii) a Danish corporation is, for taxable years beginning on and after January 1, 1948, limited to 15 percent under the provisions of Article VI (relating to dividends) if such alien or corporation, at no time during the taxable year in which such dividends were so derived, had a permanent establishment within the United States. Thus, if a nonresident alien who is a resident of Denmark, performs personal services within the United States during the calendar year 1948 but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax with respect to such dividends derived in that year from United States sources, as provided in Article VI of the convention, even though by reason of his having rendered personal services within the United States he is engaged in trade or business therein in that year within the meaning of section 211(b) of the Internal Revenue Code. If, for example, A, a nonresident alien who is a resident of Denmark, derives in 1948, \$5,000 compensation for such personal services and his only other income from sources within the United States consists of dividends, the dividends are subject to tax at a rate

not to exceed 15 percent and his earned income is subject to normal tax and surtax without taking the dividends into account in determining the tax on such earned income.

(2) *Dividends paid by a United States subsidiary corporation*. Under the provisions of Article VI(3) of the convention, dividends paid by a domestic corporation to a Danish corporation are subject to tax at the rate of only 5 percent if (i) such Danish corporation controls, directly or indirectly, at the time the dividend is paid 95 percent or more of the voting power in such domestic corporation, (ii) not more than 25 percent of the gross income of the domestic corporation for the three-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest paid to such domestic corporation by its own subsidiary corporations, if any), and (iii) the relationship between such domestic corporation and such Danish corporation has not been arranged or maintained primarily with the intention of securing such reduced rate of 5 percent.

(b) *Interest and royalties*. (1) Interest, whether on bonds, securities, notes, debentures, or any other form of indebtedness (including interest on obligations of the United States and on obligations of instrumentalities of the United States), and royalties for the right to use copyrights, patents, designs, secret processes and formulae, trade-marks, and other analogous property and royalties (including rentals and like payments in respect of motion picture films) received from sources within the United States by (i) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Denmark, or (ii) a Danish corporation, are, for taxable years beginning on and after January 1, 1948, exempt from United States tax under the provisions of Articles VII and VIII of the convention if such alien or corporation at no time during the taxable year in which such interest or royalty was so derived had a permanent establishment situated within the United States.

(2) Such interest and royalties are, therefore, not subject to the withholding provisions of the Internal Revenue Code.

(c) *Beneficiaries of an estate or trust.*

(1) A nonresident alien who is a resident of Denmark and who is a beneficiary of a domestic estate or trust shall be entitled to the exemption, or reduction in the rate of tax, as the case may be, provided in Articles VI, VII and VIII of the convention with respect to dividends, interest and royalties to the extent that such item or items are included in his distributive share of income of such estate or trust if he at no time during the taxable year had a permanent establishment in the United States. In such case such beneficiary must, in order to be entitled to the exemption or reduction in the rate of tax execute Form 101-D or Form 1001A-D (modified to show dividends where applicable) and file such form with the fiduciary of such estate or trust in the United States.

(2) In any case in which dividends, interest or royalties are derived from United States sources by a Danish estate or trust, any beneficiary of such estate or trust who is not a resident of Denmark, or who has a permanent establishment in the United States, is not entitled to any exemption under the convention with respect to such income included in his distributive share of the income of the estate or trust.

§ 521.109 Real property income, natural resource royalties.

Under Article IX of the convention, a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Denmark, or a Danish corporation, who derives from sources within the United States in any taxable year beginning on or after January 1, 1948, income from real property (not including interest derived from mortgages or bonds secured by real property) or royalties from the operation of mines, quarries, oil wells or other natural resources may, for such taxable year, elect to be subject to Federal income tax as if such alien or corporation were engaged in trade or business within the United States by reason of having a permanent establishment therein during such

taxable year. Such election shall be made by so signifying on the return for such year. The election so signified shall be irrevocable for the taxable year for which such election is made. In such case a return may be filed by the nonresident alien or foreign corporation even though the sole income of such alien or corporation from sources within the United States is fixed or determinable annual or periodical income upon which the tax has been fully satisfied at the source and there exists no necessity for the filing of the return except for the purposes of securing the benefits of Article IX of the convention. See § 29.217-2 of Regulations 111 (26 CFR 1949 ed. Supps. 29.217-2) [and § 39.217-2 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)]

§ 521.110 Government wages, salaries, pensions and similar remuneration.

Under Article X (1) of the convention any wage, salary, similar compensation or pension paid by the Government of Denmark or by any other public authority within Denmark to an individual in the United States is exempt from Federal income tax for taxable years beginning on and after January 1, 1948. By reason, however, of the application of Article XV (a) of the convention, such exemption does not apply to recipients of such income who are either citizens of the United States or alien residents therein. As to the taxation generally of compensation of alien employees of foreign governments, see section 116(h) of the Internal Revenue Code and § 29.116-2 of Regulations 111 (26 CFR 1949 ed. Supps. 29.116-2) [and § 39.116-2 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)].

§ 521.111 Pensions and life annuities.

Under the provisions of Article X(2) of the convention, private pensions and life annuities derived from sources within the United States by nonresident alien individuals who are residents of Denmark are exempt from Federal income tax for taxable years beginning on and after January 1, 1948. The term "life annuities" is defined in Article X(3). The term "private pensions" does not include pensions or retired pay paid by the United States or

by any State or Territory of the United States; it does include periodic payments made in consideration for services rendered or by way of compensation for injuries received.

§521.112 Compensation for labor or personal services.

Article XI of the convention adopts the principle that compensation for labor or personal services, including the practice of the liberal professions, is subject to tax only in the contracting State in which such services are rendered. Hence, in general, such compensation derived by a nonresident alien individual residing in Denmark for services rendered in the United States is subject to Federal income tax. Under Article XI of the convention this general rule is subject to the following exceptions:

(a) Where such individual is temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year, compensation received for labor or personal services within the United States during such year is exempt from Federal income tax provided such compensation does not exceed \$3,000 in the aggregate.

(b) Where such individual is temporarily present in the United States for a period or periods not exceeding a total of 180 days during the taxable year, compensation for labor or personal services within the United States during such year is exempt from Federal income tax provided such compensation is received for services performed as a worker or employee of, or under contract with, a resident or corporation of Denmark (even though such resident or corporation is engaged in trade or business in the United States) which resident or corporation actually bears the expense of such compensation and is not reimbursed therefor by another person.

As to the source of compensation for labor or personal services, see section 119(a)(3) of the Internal Revenue Code.

§521.113 Students and apprentices; remittances.

Under Article XIII of the convention, citizens of Denmark who are temporarily present in the United States as

students or apprentices exclusively for the purposes of study or for acquiring business experience, are exempt for taxable years beginning on or after January 1, 1948, from Federal income tax upon amounts representing remittances from sources outside the United States for the purposes of their maintenance or studies.

§521.114 Visiting professors or teachers.

Under Article XIV of the convention, an alien who is a resident of Denmark but who is temporarily present within the United States for the purpose of teaching, lecturing, or instructing at any university, college, school, or other educational institution, situated within the United States, is, for a period not exceeding two years from the date of his arrival in the United States, exempt for taxable years beginning on or after January 1, 1948, from Federal income tax on remuneration received for such services. It shall be deemed that such alien coming to the United States for the purposes indicated has, for a period of not more than two years immediately succeeding the date of his arrival within the United States for such purposes, the tax status of a nonresident alien in the absence of proof of his intention to remain indefinitely in the United States.

§521.115 Credit against United States tax liability for Danish tax.

For the purpose of avoidance of double taxation, Article XV provides that, on the part of the United States, there shall be allowed against the United States income tax a credit for the amount of Danish taxes described in Article I of the convention imposed on income derived from sources within Denmark for taxable years beginning on and after January 1, 1948. Such credit, however, is subject to the limitations provided in section 131 of the Internal Revenue Code (relating to the credit for foreign taxes). See §§29.131-1 to 29.131-10 of Regulations 111 (26 CFR 1949 ed. Supps. 29.131-1 to 29.131-10) [and §§39.131(a) 1 to 39.131(j)-1 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)].

§ 521.116 Reciprocal administrative assistance.

(a) *General.* (1) By Article XVII of the convention, the United States and Denmark adopt the principle of exchange of such information as is necessary for carrying out the provisions of the convention or for the prevention of fraud or for the detection of practices which are aimed at reduction of the revenues of either country, but not including information which would disclose a trade, business, industrial or professional secret or trade process.

(2) The information and correspondence relative to exchange of information may be transmitted directly by the Commissioner of Internal Revenue to the Chief of the Taxation Department of the Ministry of Finance (Generaldirektøren for Skattevaesenet) of Denmark.

(b) *Information to be furnished in due course.* (1) Pursuant to such principle, withholding agents shall, in the preparation of withholding returns, Form 1042, report on such returns, for the calendar year 1949 and each subsequent calendar year, in addition to the items of income upon which tax has been withheld at the source, those items of income paid to a nonresident alien individual resident in Denmark, or to a Danish corporation, upon which tax has not been withheld at the source. Such return shall show the same information with respect to such items of income upon which tax has not been withheld at the source as is shown with respect to items of income upon which the tax has been withheld at the source.

(2) In accordance with the provisions of Article XVII of the convention, the Commissioner of Internal Revenue will transmit to the Chief of the Taxation Department of the Ministry of Finance of Denmark, as soon as practicable after the close of the calendar year 1949, and of each calendar year thereafter during which the convention is in effect, the following information relating to such calendar year: The names and addresses of all persons whose addresses are in Denmark as disclosed on such withholding return, Form 1042, deriving from sources within the United States dividends interest (other than coupon bond interest), rents, royalties,

salaries, wages, pensions, annuities and other fixed or determinable annual or periodical profits or income, and the amount of such income with respect to such persons as disclosed on such return, together with ownership certificate, Form 1001-D, filed in connection with coupon bond interest. Such transmission shall constitute compliance with Article XVII of the convention and of §§ 521.101 to 521.117.

(c) *Information in specific cases.* Under the provisions and limitations of Article XVII of the convention, and subject to the provisions of Article XIX and Article XXII of the convention, and upon the request of the Chief of the Taxation Department of the Ministry of Finance of Denmark, the Commissioner of Internal Revenue shall furnish to the Chief of the Taxation Department information available to or obtainable by the Commissioner of Internal Revenue relative to the tax liability of any person under the revenue laws of Denmark in any case in which such information is necessary to the administration of the provisions of the convention or for the prevention of fraud or the administration of statutory provisions against tax avoidance.

§ 521.117 Claims in cases of double taxation.

Under Article XX of the convention, where the action of the revenue authorities of the contracting States has resulted in double taxation in respect of any of the taxes to which the convention relates, the taxpayer is entitled to lodge a claim with the country of which he is a citizen or, if he is not a citizen of either country, with the country of which he is a resident, or if the taxpayer is a corporation or other entity, with the country in which it is created or organized. Article XX further provides that should the claim be upheld, the competent authority of the country with which the claim is lodged may come to an agreement with the competent authority of the other country with a view to equitable avoidance of the double taxation. Such a claim on behalf of a United States citizen or corporation or other entity, or on behalf of a resident of the United States who is not a Danish citizen, shall be filed with the Commissioner of Internal

Internal Revenue Service, Treasury

§ 521.117

Revenue, Washington, D.C. The claim should be set up in the form of a letter and should show fully all facts on the basis of which the claimant alleges that such double taxation has resulted. If the Commissioner of Internal Revenue determines that there is an appro-

priate basis for the claim under the convention, he will take the matter up with the Chief of the Taxation Department of the Ministry of Finance of Denmark with a view to arranging an agreement of the character contemplated by Article XX.